

In the Matter of Merchant Mariner's Document No. Z-593495 and all other Seaman Documents
Issued to: HATUEY JOSE BERRIDO

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1163

HATUEY JOSE BERRIDO

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 14 August 1959, an Examiner of the United States Coast Guard at New York, New York revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a utilityman on board the United States SS SANTA ISABEL under authority of the document above described, on or about 6 May 1959, Appellant wrongfully had marijuana in his possession.

At the hearing, Appellant was represented by counsel of his own choice. Appellant entered a plea of not guilty to the charge and specification. Evidence was introduced by both parties. Appellant testified that he had no knowledge concerning the marijuana found in one of his suitcoat pockets; other people had access to the suits while they were hanging in the ship's passageway earlier on the day that Appellant left the ship; Appellant has no idea who might have placed the marijuana in the pocket.

At the conclusion of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. An order was entered revoking all documents issued to Appellant.

FINDINGS OF FACT

On 6 May 1959, Appellant was serving as a utilityman on board the United States SS SANTA ISABEL and acting under authority of his Merchant Mariner's Document No. Z-593495 while the ship was in the port of New York.

On this date, Appellant was leaving the ship at the completion of the voyage. A shipmate was carrying Appellant's suits for him while Appellant was carrying other luggage. A Customs Officer conducted a search and found eleven grains of loose marijuana in a brown paper bag in the breast pocket of one of Appellant's coats. Appellant admitted ownership of the coat but denied having any knowledge about the paper bag or its contents. The shipmate who

was carrying the suits made a similar denial to the Customs authorities. A search of their quarters on the ship disclosed no further evidence of marijuana or other contraband.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that, contrary to American principles of law under which there is a presumption of innocence, the Examiner placed the burden on Appellant, to prove his innocence, by making the inference that the marijuana belonged to Appellant.

APPEARANCE: Marc Hermelin, Esquire, of New York City, of Counsel.

OPINION

After considering both Appellant's testimony denying knowledge concerning the marijuana and the possibility that someone else placed it in the coat pocket, the Examiner refused to accept Appellant's denial and reached the conclusion that Appellant was guilty as charged. The presumption of innocence may be overcome and a prima facie case of wrongful possession made out by the rebuttable presumption of fact of conscious and knowing possession arising from the proof of physical possession of the marijuana. See Commandant's Appeal Decision No. 827 citing Yee Hem v. U. S. (1925), 268 U. S. 178, 184-5. Since the Examiner did not accept Appellant's testimony as the truth, the prima facie case made out by the fact that the marijuana was found in Appellant's clothing was not rebutted. As stated by the Examiner referring to Commandant's Appeal Decision No. 1081, concerning the access of others to Appellant's clothing, it is not required that the possession of a narcotic be personal and exclusive in order to find a person guilty of a narcotic offense.

On the basis of the above, it is my opinion that the Examiner reached the proper conclusion after having rejected the denials of knowledge made by the Appellant.

ORDER

The order of the Examiner dated at New York, New York, on 14 August 1959, is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 29th day of April, 1960.